

E. Auerbach

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

CHMURA ECONOMICS & ANALYTICS,
LLC,

Plaintiff/Counterclaim,

Defendant

Case No.

v.

3:19-cv-813-REP

RICHARD LOMBARDO,

Defendant/Counterclaim

Plaintiff.

VOLUME II

VIDEOCONFERENCE DEPOSITION OF
ELI AUERBACH (Via videoconference.)

Cleveland, Ohio

Thursday, May 7, 2020

Reported by:

DEBORAH C. FUREY, RPR, CLR, CRI

JOB NO. 179913

E. Auerbach

May 7, 2020

9:58 a.m.

Videoconference deposition of ELI AUERBACH,
held via videoconference, before Deborah C. Furey, a
Registered Professional Reporter, Certified LiveNote
Reporter, and Notary Public of the states of Ohio and
Kentucky.

E. Auerbach

APPEARANCES:

MCGUIREWOODS

Attorneys for Plaintiff/Counterclaim Defendant

Gateway Plaza

800 East Canal Street

Richmond, Virginia 23219

BY: HEIDI SIEGMUND, ESQUIRE

(Via videoconference.)

KOEHLER FITZGERALD

Attorneys for Defendant/Counterclaim Plaintiff

1111 Superior Avenue East

Cleveland, Ohio 44114

BY: CHRISTINE COOPER, ESQUIRE

GOTTSCHLICH & PORTUNE

Attorneys for the Witness

201 East 6th Street

Dayton, Ohio 45402

BY: TERRY POSEY, ESQUIRE

1 E. Auerbach

2 MS. SIEGMUND: This is Heidi Siegmund
3 with McGuire Woods, representing the
4 plaintiff, Chmura.

5 I'm just noting for the record that all
6 counsel have stipulated that it's fine that
7 we're doing this remotely, and that the court
8 reporter and the witness are not in the same
9 room, and that no one objects to that
10 arrangement.

11 MR. POSEY: This is Terry Posey for
12 Mr. Auerbach, we consent to that arrangement.

13 MS. COOPER: Counsel for Mr. Lombardo,
14 Christine Cooper, and we consent, as well.

15 E L I A U E R B A C H,

16 called as a witness, having been first
17 duly sworn by a Notary Public, was
18 examined and testified as follows:

19 EXAMINATION BY

20 BY MS. SIEGMUND:

21 Q. Mr. Auerbach, I won't go over the rules
22 again, but, of course, this is all the same as
23 what we were going through on Tuesday, as far as
24 you being under oath, and we'll try not to talk
25 over each other and so forth.

1 E. Auerbach

2 I just have a very little bit more to go
3 over with you.

4 I think when we left off on Tuesday we
5 were going through your affidavit that you had
6 executed before leaving Chmura, and making sure
7 that we got on the record anything that you no
8 longer think is totally accurate.

9 So I'm going to submit that same exhibit
10 that we used the other day.

11 (Exhibit A previously marked for
12 identification was offered.)

13 Q. Mr. Auerbach, hopefully these come
14 through a little bit more quickly today. So just
15 let me know when that affidavit comes up for you.

16 I think we had gone through the first
17 page on the record the other day, so I am going to
18 go ahead and skip to Page 2.

19 A. The computer is still loading.

20 Q. Mr. Auerbach, has that affidavit come
21 through?

22 A. No, it just shows me. On the right side
23 it says, "Exhibit loading. Please wait."

24 There's been no change.

25 Q. Are you able to go to the exhibit files

1 E. Auerbach

2 and see the submitted exhibit?

3 A. I tried a few times now to do that. I
4 can see that it's there, but when I go to look at
5 the preview, it says "Error."

6 Q. Okay. I did ask the LiveLitigation
7 folks about this, and they said it's just a
8 function of the internet connection. So sorry for
9 the delay, but just let me know when it comes
10 through.

11 I just submitted it again, and I'll also
12 go ahead and e-mail this to you and Mr. Posey.

13 And I think we all know what we're
14 looking at and maybe that will be faster.

15 This is the only exhibit I'm going to
16 use today, so hopefully we won't take up too much
17 time with this.

18 I'm going to go ahead and send this by
19 e-mail. This won't be the stamped version that's
20 in LiveLitigation, but just so we can move this
21 along.

22 MR. POSEY: I'll be happy to review it
23 and stipulate that it's the same, once I see
24 your e-mail.

25 MS. SIEGMUND: All right. You should

1 E. Auerbach

2 all be getting that exhibit by e-mail here in
3 a second.

4 BY MS. SIEGMUND:

5 Q. Mr. Auerbach, let me know when you get
6 that e-mail, that might be faster.

7 A. Sorry, I was on mute. It has arrived.

8 Q. Excellent.

9 MR. POSEY: I would stipulate that the
10 document that you e-mailed to enter,
11 Chmura0000184 through 187, which I believe is
12 the same as the submitted Exhibit A.

13 MS. SIEGMUND: Super.

14 Q. Mr. Auerbach, do you have that e-mail,
15 Exhibit A in front of you?

16 A. I do, yes.

17 Q. Okay. So let's look at Page 2. Take a
18 look at Page 2 for me, please, and let me know if
19 you see anything on Page 2 that you now believe is
20 false.

21 A. It looks correct to me.

22 Q. Super.

23 Let's go to Page 3, take a look at
24 Page 3 and tell me if there's anything you see on
25 here that is false.

1 E. Auerbach

2 And that's Chmura -- the number at the
3 bottom is Chmura0000186?

4 A. This looks correct.

5 Q. Super.

6 Let's go to Page 4, that's the last
7 page, it has your signature on it.

8 Let me know if you see anything on
9 Page 4 that you now believe is false.

10 A. That is correct.

11 MS. SIEGMUND: Super.

12 That is all I have for you. Thank you,
13 Mr. Auerbach.

14 I think Ms. Cooper will have some
15 questions for you.

16 MS. COOPER: Thank you.

17 EXAMINATION

18 BY MS. COOPER:

19 Q. Good morning, Mr. Auerbach, how are you?

20 A. Good morning. Well, thank you.

21 Q. Good. I want to ask you a few
22 background questions before I jump into a couple
23 of specifics and go down that path.

24 You were a sales manager at Chmura,
25 right?

1 E. Auerbach

2 A. That is correct.

3 Q. Did you have any prior management
4 experience?

5 A. I had, yes.

6 Q. And can you tell me a little about your
7 management experience prior to joining Chmura?

8 A. It was probably three specific positions
9 I think align closely to what I did at Chmura.

10 Probably mid 20's, about 15 years ago, I
11 was a sales manager for a steel company in
12 Cleveland. I was there for a few years.

13 And then there was a position I held
14 over at the Council of Small Enterprises.

15 (Discussion held off the record.)

16 A. The next position I think that most
17 closely aligns was a position with COSE, the
18 Counsel of Small Enterprises. They were a large
19 regional Chamber of Commerce. And I was there for
20 three years, and was a manager in their energy
21 program.

22 And then, after leaving there, I worked
23 for a company called Echo. They were an energy
24 retrofit company, worked with mid- to medium-sized
25 businesses, and I was in management there, as

E. Auerbach

well.

Q. And approximately how many years of management experience do you have?

A. I'd say from my first experience until now, about 15 years.

Q. I want to turn your attention to your work at Chmura.

What were your job responsibilities?

A. So primarily I was responsible for working with the sales team to cultivate new sales opportunities, new business; to get a high rate of renewal for our existing client base; and also work with account managers to most efficiently and effectively cultivate these opportunities through e-mail campaigns or calling or developing call lists for them to work from; and then, preparing a number of different reports, sometimes weekly, sometimes monthly, to share with leadership to keep them apprized of our progress.

Q. Were you, during the time of your employment, Mr. Lombardo's direct supervisor?

A. I was, yes.

Q. And do you know what his job title was at the time you were his supervisor?

1 E. Auerbach

2 A. Senior account manager.

3 Q. There's the account manager position and
4 the senior account manager position, correct?

5 A. That is correct, yes.

6 Q. What's your understanding of the
7 difference between the two?

8 A. To be very honest, I don't see there
9 being a difference between the two.

10 My understanding was the increase in
11 that title was developed as a means to appease the
12 older account managers that were there, so that
13 they can be distinguished between newer account
14 managers coming in.

15 Q. Mr. Lombardo would have been one of
16 those older account managers, right?

17 A. That is correct, yes.

18 Q. I want to talk about your observations
19 and your own personal knowledge of the hours
20 Mr. Lombardo worked.

21 First -- and we went through some of
22 this last week. I just want to drill down a
23 little bit.

24 Did you spend most workdays in the
25 office?

1 E. Auerbach

2 A. I did, yes.

3 Q. And did you -- you didn't -- I'm sorry.
4 let me rephrase that.

5 You didn't travel as a substantial part
6 of your job responsibilities, did you?

7 A. No, it wasn't a substantial part.

8 Q. In your experience, did Mr. Lombardo
9 spend most of his workdays in the office?

10 A. That is correct, yes.

11 Q. Was Mr. Lombardo required to travel
12 substantially for work?

13 MS. SIEGMUND: Object to the form of the
14 question.

15 You can answer.

16 THE WITNESS: I think it was a regular
17 component, but I would not say substantial.

18 Q. Can you put a number on that for me? In
19 any given month, how frequently would Mr. Lombardo
20 travel?

21 A. I think a fair representation would be
22 one trip a month for about three days each time.

23 Q. And were those to -- where was he
24 traveling to?

25 A. The primary reason for traveling would

E. Auerbach

be to attend different conferences or trade shows.

Q. Did you ever have to communicate with Mr. Lombardo in the evenings, after leaving the office?

A. Yes, that was a pretty frequent occurrence.

Q. And approximately what time would you communicate with him?

A. If I had to put an average on it, it would usually be somewhere probably between 7 or 8:00 at night.

Q. And when you would call him at 7 or 8:00 at night, were you able to get ahold of him?

A. Every time, yes.

Q. Do you know how frequently those phone calls would occur?

A. I would say, just based on averages, it was probably weekly. There might be some weeks, not at all, other weeks we had to talk regularly. But, I would say probably average weekly.

I know that, when he would go to conferences, as with all of the account managers, we would touch base pretty often, just to get an understanding of how things were going while they

1 E. Auerbach

2 were there.

3 Q. Would you ever have reason to call if
4 Mr. Lombardo wasn't at a conference?

5 A. Absolutely, yes.

6 Q. What was your understanding of
7 Mr. Lombardo's employment responsibilities while
8 as a senior account manager?

9 A. The significant majority of his time
10 went toward pursuing new business opportunities,
11 and working very closely with his existing client
12 base, just to make sure the platform was working
13 for them the way that they wanted. As well as
14 answering any questions they may have regarding
15 how to maximize the platform and their use of it.

16 Q. Was Mr. Lombardo ever responsible for
17 supervising other employees?

18 A. No.

19 Q. Was he responsible for making decisions
20 about company strategy?

21 A. No.

22 MS. SIEGMUND: Object to the form of the
23 question.

24 You can answer.

25 THE WITNESS: No, he was not.

E. Auerbach

Q. Was he responsible for setting spending priorities?

A. No.

Q. Was he responsible for establishing policies or procedures for the company?

MS. SIEGMUND: Object to the form of the question.

You may answer.

THE WITNESS: No.

Q. Was he responsible for any form of compliance?

A. Can you define "compliance," please?

Q. Sure. Was he -- fair question.

Was he responsible for any legal compliance activities at Chmura?

A. The one singular thing that I think might qualify is submitting to the client, and then providing to leadership, the contract for the platform itself. But I think the best way to describe that was an intermediary between the two parties.

Q. Okay. Did Mr. Lombardo ever decide what conferences or trade shows he would attend?

A. No.

E. Auerbach

Q. Was Mr. Lombardo allowed to decide whether he would drive or fly to the conferences?

A. I would say the best way to explain that is he was permitted to give input, and sometimes leadership would agree with it, other times not.

Q. Who decided which conferences and trade shows Mr. Lombardo would attend?

A. I would say leadership was largely responsible.

Q. Who made decisions on -- let me go back for a second.

Who made the ultimate decision on how Mr. Lombardo would travel?

A. I would say that was leadership.

Q. Did Mr. Lombardo ever visit clients on site?

A. Not to my knowledge, no.

Q. Can you describe what it was like managing Mr. Lombardo?

A. I would say overall it was a very good experience. I think we had some growing to do together in the first weeks I was there, but I think afterwards, we had excellent communication with each other.

1 E. Auerbach

2 Mr. Lombardo was always very helpful,
3 not just to me when I was first coming on, but he
4 always took a vested interest in helping to guide
5 and mentor some of the newer account managers that
6 came on.

7 But, he was always someone I could count
8 on to produce at a high level every month. He did
9 just about everything I would ask him to do. He
10 took suggestions very well. He was a very good
11 quality account manager for the organization.

12 Q. Would you have described him as
13 difficult to manage?

14 A. No.

15 Q. I'm going to show you what has been
16 marked previously as -- bear with me while I pull
17 it up here -- as Plaintiff's Exhibit I. I'll try
18 to submit it through this. I have not done this
19 before and perhaps I should e-mail it to everybody
20 as well, since we're having some difficulty. Let
21 me see if I can.

22 That did not work. Okay.

23 Did I lose -- I think I lost everybody.

24 If you can hear me, you can't see me?

25 MS. COOPER: If we could go off the

1 E. Auerbach

2 record one minute while I hook myself back up.

3 (Recess taken from 10:24 a.m. to
4 10:27 a.m.)

5 (Exhibit I Plaintiff's previously
6 marked for identification was
7 offered.)

8 BY MS. COOPER:

9 Q. Mr. Auerbach, I believe you were shown
10 this document the last -- the other day. It's
11 marked as Plaintiff's Exhibit I.

12 Can you identify this document?

13 A. Yes, this was a phone conversation I was
14 asked to document by leadership at Chmura.

15 Q. And did you prepare this document?

16 A. I did, yes.

17 Q. And it pertains to a phone conversation
18 you had with Mr. Lombardo, correct?

19 A. That is correct.

20 Q. And when was the phone conversation?

21 A. I believe it is correctly stated as
22 October 21st.

23 Q. Do you recall when you prepared the
24 notes?

25 A. I do not recall the exact date.

1 E. Auerbach

2 If I had to venture a guess, I would
3 probably say within a week of this conversation
4 happening.

5 Q. Did you prepare these notes in the
6 ordinary course of your responsibilities at
7 Chmura?

8 A. I certainly interpret it that way.

9 Q. And did you maintain this document with
10 the other business documents you maintained for
11 Chmura?

12 A. No, I did not.

13 Q. How did you keep this document?

14 Let me ask, did you keep this document?

15 A. I believe I did, and I believe there was
16 a separate folder I created specific to everything
17 related to the separation of Mr. Lombardo from
18 Chmura.

19 Q. Did you provide this document to others
20 at Chmura?

21 A. I only gave it to leadership.

22 Q. To your knowledge, was this document
23 relied upon at Chmura, at least in part, to make
24 business decisions with respect to Mr. Lombardo's
25 employment status?

1 E. Auerbach

2 A. I do not know. I'm not sure what
3 leadership -- how they interpreted this
4 conversation.

5 Q. To your knowledge, when you spoke to
6 Mr. Lombardo on October 21st, 2019, had he already
7 received a cease and desist letter from Chmura's
8 attorneys?

9 A. Yes, I believe that was what the impetus
10 of the conversation was.

11 Q. I want to look at the last full
12 paragraph above where it says "That was the end of
13 our call."

14 If you could just take a quick read
15 through that paragraph.

16 A. Okay.

17 Q. And it says that -- I'll put the quote
18 in there, "I reminded Rick that we would need to
19 make a handoff to provide him his personal effects
20 from the Cleveland office in exchange for the
21 items that belonged to Chmura, such as the
22 conference materials, laptop, and conference
23 notes."

24 Do you see that?

25 A. I do, yes.

E. Auerbach

Q. Do you recall the specifics of that part of the conversation, exactly what was said?

A. I remember in a very general sense. But, I know that because Rick was asked to leave very abruptly, none of his personal effects at his desk did he take with him.

After he was officially fired, I was told to pack up his desk and set it aside.

And then, the leadership team said that Rick would be able to get his personal effects when he signed off on their termination agreement and settlement amount, as well as him returning the -- any materials that belonged to Chmura.

Q. To your knowledge did Mr. Lombardo ever receive his personal effects back?

A. No, not that I know of.

Q. And it is stated, the -- the second sentence in that paragraph says, "I reminded him that none of that could be discussed until he had finished reviewing the legal documentation and signed off on the agreement."

Do you see that?

A. Yes.

Q. What did you mean by that?

E. Auerbach

A. It was my understanding that the leadership team wasn't going to make the exchange of his personal effects, first and foremost because Rick still had property that they felt belonged to Chmura.

But, in addition, leadership concluded that if he were to sign off on the agreement and return the belongings, they would also immediately return his personal effects.

Q. Did you instruct him during that call to return the laptop or the conference notes or the conference material?

A. I did not instruct him to do so. I simply reiterated for him what leadership was asking about.

Q. Was it your understanding that it would be a mutual exchange, he would get his personal effects back and the laptop would be exchanged at the same time?

A. That would have been my understanding, yes.

Q. Do you recall -- changing topics a little bit here.

Do you recall a conversation you had

1 E. Auerbach

2 with Mr. Lombardo regarding him notifying you that
3 he was entitled to any overtime compensation?

4 A. Yeah. This was a question I was asked a
5 couple days ago, that I did not recall.

6 But I remember, after thinking it
7 over -- I don't remember exactly when, I believe
8 it was definitely before the Indianapolis trip --
9 well, it had to have been prior to the trip to
10 Indianapolis -- but I remember him saying
11 something in passing about having been owed
12 overtime.

13 Q. When was the Indianapolis trip?

14 A. I think roughly it was the second week
15 of October.

16 Q. Okay. Do you recall any specifics about
17 the conversation?

18 A. It was something -- I recall the concept
19 of what he was presenting, but it was something
20 that I didn't clearly understand, it didn't
21 resonate with me, so I really quickly forgot it.

22 The extent of the content of what I
23 remember was just that he felt there was a
24 substantial amount of overtime he had worked, that
25 he was never compensated for.

1 E. Auerbach

2 Q. Did you tell anybody about that
3 conversation at Chmura?

4 A. I did not, no.

5 Q. And why not?

6 A. It was not at the time something that I
7 thought was a consequential statement that he had
8 made.

9 Q. Okay. Did you -- I think you stated
10 this the other day in your testimony -- did you
11 look at the information coming out of Salesforce?

12 A. While I was at Chmura?

13 Q. Yes.

14 A. Yes, on a very regular basis. It was
15 one of the primary components of my job.

16 Q. And did it track the account managers'
17 and senior account managers' activities?

18 A. In detail, yes.

19 Q. And of the sales -- I'm sorry -- of the
20 account managers and senior account managers who
21 were there at the time of your employment, did
22 Mr. Lombardo have the highest level of activity?

23 A. Yes, he consistently out performed all
24 other members of the sales team.

25 Q. Do you know how -- if you could put a

E. Auerbach

number on it, say calls, for example, how many more calls was Mr. Lombardo making, on average, than the other account managers or senior account managers?

A. I think if we're talking about the number of phone calls, it would be easy a 2 to 1 margin in favor of Mr. Lombardo.

Q. What about any e-mails sent?

A. I would say e-mails, because Mr. Lombardo, the majority of his time were phone calls, I would say he was either even with or maybe slightly behind some of the other account managers.

Q. Okay. With respect to -- I want to turn to just a few last questions. I just want to turn back to the laptop for a moment and Mr. Lombardo's departure.

Who instructed him to leave the office? I believe it was -- well, let me ask this: Was Mr. Lombardo's last day present in the office October 17th of 2019?

A. I believe that's correct.

Q. And were you present there that day?

A. I was, yes.

E. Auerbach

Q. Who instructed Mr. Lombardo to leave?

A. I received a phone call from Chris Chmura who instructed me to have Mr. Lombardo leave immediately.

Q. Did Mr. Lombardo take a laptop with him that day?

A. To the best of my recollection, I believe the laptop was in his car, which it might have very well been at home, I don't recall. But I believe, to my recollection, he left with nothing in his hands.

Q. Did you instruct him to bring the laptop back that day?

A. I did not, no.

Q. Were you at all concerned about the laptop that day?

A. In truth, I do not recall if that was a concern being discussed.

I know that at the time I asked him to leave, I wasn't aware that there was a laptop in his possession.

Q. Did leadership, prior to instructing you to have him leave for the day, did they tell you to get back any possessions of Chmura's from

1 E. Auerbach

2 Mr. Lombardo?

3 A. I don't have a recollection of them
4 asking me to do that.

5 Q. Okay.

6 MS. COOPER: Those are all of the
7 questions that I have. Thank you,
8 Mr. Auerbach.

9 MS. SIEGMUND: Do you mind if we take a
10 quick break? I don't think I have anything
11 further, but I just want to make sure I have
12 all of my notes in order.

13 MR. POSEY: Sure thing.

14 MS. SIEGMUND: Let's take five minutes.

15 (Recess taken from 10:39 a.m. to
16 10:44 a.m.)

17 EXAMINATION

18 BY MS. SIEGMUND:

19 Q. This is very quick, couple of additional
20 questions, Mr. Auerbach.

21 I know when we spoke on Tuesday you did
22 not recall Mr. Lombardo ever mentioning anything
23 about overtime, but you thought it over since
24 Tuesday and now you do recall him saying something
25 about overtime.

1 E. Auerbach

2 Was there anything in particular that
3 prompted you to remember that conversation?

4 A. No. I was just reviewing the questions
5 I had been asked. And it was, I would say, a
6 fleeting recollection from all of the different
7 conversations I had had over the last five or six
8 weeks that Mr. Lombardo was at Chmura.

9 Q. Did you review any documents that helped
10 you remember that conversation?

11 A. I did not.

12 Q. Did you review the statement that you
13 had provided to Ms. Cooper?

14 A. I did not.

15 Q. But, there was nothing in the affidavit
16 that you provided to Chmura about this
17 conversation, correct?

18 A. That is correct.

19 Q. And you provided that affidavit to
20 Chmura a few weeks after Mr. Lombardo is
21 terminated, correct?

22 A. Yes, that is correct.

23 Q. And you provided the affidavit to
24 Ms. Cooper after you were fired from Chmura,
25 correct?

E. Auerbach

A. That is correct.

MS. SIEGMUND: That's all I have. Thank
you.

MR. POSEY: We will read, just to make
sure the exhibits are properly included.

COURT REPORTER: I have McGuire Woods
has a standing order.

Do you still want your standing order?

MS. SIEGMUND: I don't know about a
standing order, but we would like a rough
draft.

COURT REPORTER: Yeah, that's in the
standing order.

MS. SIEGMUND: That's good then.

COURT REPORTER: Ms. Cooper, do you want
a copy of this transcript?

MS. COOPER: Yes, please.

(Continued to following page to include jurat.)

E. Auerbach

COURT REPORTER: Do you know what format
you want it in?

MS. COOPER: Just the mini-script or the
ordinary electronic transcript.

COURT REPORTER: Mr. Posey, do you want
a copy this transcript?

MR. POSEY: No, thank you.

(Signature not waived.)

ELI AUERBACH

Subscribed and sworn to
before me this day
of , 2020.

E. Auerbach

-----I N D E X-----

| WITNESS | EXAMINATION BY | PAGE |
|---------|----------------|------|
|---------|----------------|------|

| | | |
|--------------|--------------|---------|
| ELI AUERBACH | MS. SIEGMUND | 163/186 |
|--------------|--------------|---------|

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| | MS. COOPER | 167 |
|--|------------|-----|

-----PREVIOUSLY MARKED EXHIBITS-----

| EXHIBIT | OFFERED |
|---------|---------|
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| | |
|--------------------|-----|
| Exhibit A. | 164 |
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| Exhibit I. | 177 |
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- - -

1 E. Auerbach

2 * * *ERRATA SHEET* * *

3 NAME OF CASE: Chmura Economics & Analytics, LLC. vs

4 Richard Lombardo

5 DATE OF DEPOSITION: May 7, 2020

6 NAME OF WITNESS: ELI AUERBACH, VOLUME II

7 Reason codes:

8 1. To clarify the record.

2. To conform to the facts.

9 3. To correct transcription errors.

10 Page ____ Line ____ Reason____

11 From _____ to_____

12 Page ____ Line ____ Reason____

13 From _____ to_____

14 Page ____ Line ____ Reason____

15 From _____ to_____

16 Page ____ Line ____ Reason____

17 From _____ to_____

18 Page ____ Line ____ Reason____

19 From _____ to_____

20 Page ____ Line ____ Reason____

21 From _____ to_____

22 Page ____ Line ____ Reason____

23 From _____ to_____

24 _____

25 ELI AUERBACH

E. Auerbach

CERTIFICATE

STATE OF OHIO)

)ss:

COUNTY OF HAMILTON)

I, Deborah C. Furey, Registered
Reporter, Certified LiveNote Reporter, and Notary
Public within and for the State of Ohio do hereby
certify:

That ELI AUERBACH, the
witness whose deposition is hereinbefore set forth,
was duly sworn by me and that such deposition is a
true record of the testimony given by such witness.

I further certify that I am not related to
any of the parties to this action by blood or marriage
and that I am in no way interested in the outcome of
this matter.

In witness whereof, I have hereunto
set my hand this 18th day of May, 2020.

Deborah Furey

DEBORAH C. FUREY, RPR, CLR

My commission expires 1-11-21

Phone conversation with Rick Lombardo on 10/21/19 at 1:45 pm

Rick called me following receipt of his separation letter and the cease and desist letter from McGuire Woods. Rick expressed a bit of shock over the strong content in letter. Specifically, he struggled to understand how Chmura was able to view the conversation he and I had on Thursday October 17 as extortion.

I asked Rick if he could explain how else it could be perceived. He requested a \$100,000 payment in exchange for not attempting to solicit our clients to go to a competitor or calling our clients to badmouth Chmura. Rick was unable to explain another way to frame that.

I followed up by asking Rick what he intended to do now. He responded that he was going to forward everything he has received to his attorney for their review. Rick said he intended to wait until he was given feedback by his attorneys before taking next steps.

Rick expressed being disappointed at the small buyout number he was offered (\$10,000). I asked if he understood from Aisha and the separation agreement what he was fully entitled to. He said he did not read the agreement and was unclear from Aisha what he was going to get. I walked him through the logistics and shared that he would receive the commissions that he had earned based on the deals that both close and pay prior to the end of October.

I used this as an opportunity to explain to Rick that the possibly still existed for this to have a positive outcome for all parties involved. Specifically, I reminded him that he still has outstanding opportunities that could conceivably close. If he were willing to work amicable with me and Chmura, we can try to salvage those deals and increase his potential commission payment.

We walked through several potential deals. The first three were opportunities I was already involved with, but the fourth (Wayne County Ohio) was a new one I was not aware of. I told Rick if he thought of any additional accounts worth noting, to email me and let me know.

Lastly, I reminded Rick that we would need to make a handoff to provide him his personal effects from the Cleveland office in exchange for the items that belong to Chmura such as the conference materials, laptop, and conference notes. I reminded him that none of that could be discussed until he has finished reviewing the legal documentation and signed off on the agreement.

That was the end of the call.

Eli Auerbach

Sales Manager